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Docket No.: 20722 US1 (C038435/0175476)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Beat FLUEHMANN et al. ) Examiner: K. E. Weddington  
Serial No.: 10/766,118 ) Art Unit: 1614  
Filed: January 27, 2004 )  
For: **PHYTANIC ACID DERIVATIVE  
COMPOSITIONS AND METHOD OF  
TREATING AND/OR PREVENTING  
DIABETES MELLITUS**

New York, New York  
August 16, 2004

**RESPONSE TO RESTRICTION REQUIREMENT**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is in response to the Office Action mailed July 16, 2004, which set a one-month shortened statutory period for response. Accordingly, this response is filed timely upon mailing, with an executed certificate of mailing, on or before August 16, 2004. 37 CFR § 1.8. No fee is believed to be due. If it is determined that a fee is due, please charge such fee to Deposit Account No. 02-4467. A duplicate copy of this sheet is enclosed.

On page 2 of the Office Action, the Examiner issued a five-way restriction requirement pursuant to 35 USC § 121. The restriction divided the claims into the

following allegedly distinct inventions: Group I (claim 1) is "drawn to a method of making a composition"; Group II (claims 2-9) is "drawn to a composition comprising phytanic acid"; Group III (claims 10-13) is "drawn to a method of treating or preventing NIDDM with phytanic acid"; Group IV (claims 14-18) is "drawn to a method of increasing cellular glucose uptake with phytanic acid"; and Group V (claim 19) "is drawn to a method of reducing plasma insulin with phytanic acid." (Paper No. 139 at 2).

In accordance with restriction practice, the subject matter of claims 10-13 (Group III) is hereby elected for prosecution with traverse.

If the Examiner has any questions regarding this paper, please contact the undersigned attorney.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450, on August 16, 2004.

  
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Respectfully submitted,

By: 

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